power of self-control by reason of provocation, but at another part of his summing-up he said that if the court were left with a reasonable doubt as to whether there was provocation or not then they have to accept that the defence had succeeded in bringing his case within Exception 1 of section 300 of the Penal Code. In our view there is no ground for this complaint.

On the question of the defence of provocation however, the Privy Council in the Ceylonese case of *Jayasena* v. *Regina*[1] has ruled that the burder of proving accident, provocation, or self-defence rested upon the accused and could not be construed in the light of a decision in *Woolmington* v. *Director of Public Prosecutions*[2] that had changed the English law. In the Federation we have been following the decision in *Woolmington's* case as is apparent in the judgment of the Court of Appeal (as it was then known) in the case of *Looi Wooi Saik* v. *Public Prosecutor*.[3] The provision of section 105 of the Evidence Ordinance of Ceylon is similar to our section 105. *Looi Wooi Saik's* case would, therefore, appear to have been overruled, but we have to say that this matter was not fully argued before us.

In the second ground it was argued that the learned judge had failed to point out to the assessors that there had been a series of acts of provocation given by the deceased Senia in repeatedly accusing the appellant of being unfaithful to her and also of being a stupid person, and the final act of accusing him of being a cheat must have such effect on the appellant that it was reasonable to infer that he had lost control of himself when he stabbed Senia. Our attention was also drawn to the following passage in the summing-up:

"... In considering this defence the mental background created by the previous acts of Senia at the longhouse on 13/11/71 may be taken into consideration to ascertain whether the subsequent act of Senia and or Abang caused grave and sudden provocation for committing the offences charged...."

In view of this direction, we are therefore of the opinion that there is no substance in this ground.

The third ground was to the effect that both the learned judge and the assessors had failed to direct their minds to the gravity of the accusation on the rural mind of the appellant. According to the appellant the distribution of the joint property had been approved by the Native Court. We understood this ground to suggest that in considering the question of provocation the fact that the appellant was a simple-minded person should have been considered. To succeed in a defence of grave and sudden provocation, it is necessary in law for the defence to satisfy the court that not only by the acts of the deceased that the accused had been deprived of the power of self-control, but such acts of provocation would also have deprived a reasonable man of the power of self-control. We have no means of knowing the reasons why the assessors had rejected the defence of provocation in this case. It could be that they were not satisfied that the appellant had been deprived of the power of self-control within the requirement of the law or that they had rejected it because in the circumstances of the case a reasonable man would not have been so deprived. We found, however, that the learned judge had correctly directed the assessors and himself on this question, and we therefore have to dismiss this ground also.

In the result the appeal against conviction and sentence is dismissed.

Appeal dismissed.

NG SIEW SAN v. MENAKA

[F.C. (Azmi L.P., Suffian and Ong Hock Sim F.JJ.) October 6, 1973]

[Kuala Lumpur — Federal Court Civil Appeal No. 90 of 1972]

Contract — Loan made by moneylender in name other than registered name — Agreement forbidden by law — Contract void — Whether moneylender entitled to get recovery of money lent — Parties unaware of illegality until after execution of the contract — Contracts (Malay States) Ordinance, 1950, ss. 24 and 66.

Moneylenders — Money lent by moneylender in name other than registered name — Loan illegal and void — Moneylenders Ordinance, 1951, ss. 8(b) & (c) and 16.

In this case the respondent by her attorney had lent money to the appellant on the security of a charge of certain lands belonging to the appellant. The respondent was a registered moneylender carrying on business under the name of AR.PR.M. Firm but the loan in this case was made by the attorney on behalf of the respondent personally. The respondent applied for an order for sale of the lands to satisfy the principal sum and interest. The appellant objected to the application on the ground, *inter alia*, that as the loan was not made in the registered name of the moneylender the moneylender had contravened section 8(b) and (c) of the Moneylenders Ordinance. The learned trial judge held that the provisions of section 8(b) and (c) of the Moneylenders Ordinance had been contravened and therefore the loan was illegal and void ([1973] 1 M.L.J. 50). He held however that section 66 of the Contracts (Malay States) Ordinance applied and he made an order that the application for the order of sale be dismissed upon payment of the sum of $19,400, the balance of the principal sum. The appellant appealed on the ground that the learned trial judge was wrong in directing him to pay to the respondent the sum of $19,400 as a condition of obtaining the relief he sought. The respondent cross appealed and contended that the learned trial judge was wrong in holding that section 8(b) and (c) of the Moneylenders Ordinance had been contravened and that the loan transaction was therefore illegal and void.

Held: (Azmi L.P. and Suffian F.J., Ong Hock Sim F.J. dissenting): (1) the agreement in this case was forbidden by section 8(b) and (c) of the Moneylenders Ordinance and therefore the agreement was void;

(2) the learned trial judge was correct in the circumstances of this case in finding that neither the respondent nor her attorney was aware of the illegality of the transaction at the time of the execution of the documents and therefore section 66 of the Contracts (Malay States) Ordinance was applicable and the learned trial judge was right in ordering the return of the sum of $19,400 to the respondent;

(3) the respondent was entitled to interest at the rate of 6% on such sum from the date of the institution of the suit.

Cases referred to:

(1) *Cope* v. *Rowlands* (1836) 2 M. & W. 149 at p. 157.

(2) *Whiteman* v. *Sadler* [1910] A.C. 514 at p. 526.

(3) *Kanuari Sivaramakrishnaiah* v. *Vemuri Venkata Narchari Rao* A.I.R. 1960 And. Pra. 186 at p. 188.

(4) *Harnath Kaur* v. *Indar Bahador Singh* L.R. 50 I.A. 69.

(5) *Societe Belge de Banque* v. *Girdhari Lal* A.I.R. 1940 P.C. 09, 91.

(6) *Barrell* v. *Fordree* [1932] A.C. 676, 682.

(7) *Chai Sau Yin* v. *Kok Seng Fatt* [1966] 2 M.L.J. 54 at 56.

(8) *Kasumu* v. *Baba-Egbe* [1965] 3 All E.R. 266, 271.

(9) *Whiteman* v. *Sadler* [1910] A.C. 514 at 535.

(10) *Nasib Singh* v. *Jamilah binti Abd. Hamid* [1972] 1 M.L.J. 255.

(11) *Chin Cheng Hong & Anor.* v. *Hameed & Ors.* [1953] M.L.J. 135 at 136.

FEDERAL COURT.

M Segaram for the appellant.

V. K. Palasuntharam for the respondent.

Azmi L.P.: Menaka wife of M. Deivarayan (hereinafter referred to as Menaka) applied by way of originating summons to the High Court at Kuala Lumpur for an order of sale by public auction of certain pieces of land (hereinafter referred to as the said lands) to satisfy a principal sum of $20,000 and interest thereon, lent by her to Ng Siew San (hereinafter referred to as Ng). The said lands were charged to Menaka and a charge was registered at the Land Office as security for the said loan. The application was made by one Nachiappa Chettiar acting as the attorney of Menaka. In my view it is important to note that nowhere in his affidavit in support of the application for the sale of the land did Nachiappa state that the moneylender was the AR. PR. M. Firm and that Menaka was merely the managing director.

Ng objected to the application upon several grounds and set out the facts and his grounds of objections which I summarise as follows: —

1. Menaka was licensed to carry on the business of moneylending under the authorised name of AR. PR.M. Firm at the authorised address of 30 Leboh Ampang, Kuala Lumpur.
2. Manickam Chettiar was licensed to carry on the business of moneylending as agent of AR. PR. M. Firm at the same address.
3. The memorandum under section 16 of the Moneylenders Ordinance 1951 disclosed that Menaka is the lender and that Manickam Chettiar signed it as her attorney. The charge registered at the Land Office as Presentation No. 167/65 also disclosed Menaka as the chargee and the document was signed by Manickam Chettiar as her attorney.
4. It is alleged that both Menaka and Manickam Chettiar having been licensed to carry on the business of moneylending under the authorised name of AR. PR. M. Firm carried out the business in the name of Menaka, and had contravened the provisions of section 8(b) of the Ordinance.
5. The licence granted to Manickam Chettiar to carry on the business of moneylending as an agent of AR. PR. M. Firm does not permit him to carry on the business in three ways at the same time namely:
   (i) in the name of the firm on behalf of the firm,
   (ii) also separately on behalf of Menaka in her personal name and
   (iii) AL. Chockalingam in his own individual name.
6. The memorandum under section 16 failed to disclose the following terms stated in the charge: —
   (a) that Ng shall not transfer, sell, charge or otherwise deal with the land without the written consent of the said chargee first had and obtained, and
   (b) that the said chargee shall have the custody or possession of the issue documents of title of the land charged.
7. Neither in the memorandum under section 16 of the Ordinance nor in the memorandum of charge registered in the Land Office was disclosed the authorised name of AR. PR. M. firm. Menaka having entered into the agreement for the loan and repayment of the money lent and having executed the said memorandum under section 16 otherwise than in the authorised name of AR. PR. M. Firm, had rendered the transaction illegal, void and unenforceable.

Ng thereupon asked for a declaration to that effect.

Nachiappa Chettiar, Menaka's present attorney filed an affidavit in reply. He admitted the facts alleged in paragraphs 1, 2 and 3 above. He further stated that Menaka was at all material time the managing partner of AR. PR. M. Firm and the cheque and the receipts in connection with the loan were in the name of AR. PR. M. Firm. In reference to paragraph 4 above he said that Ng well knew at all material time that the lender was AR. PR. M. Firm and that Menaka was the managing partner. He denied that Ng was entitled to the prayer in paragraph 7. He further made the following claim: —

"4(a) Even if Ng is entitled to the prayers contained in paragraph 16 of his affidavit (paragraph 7 above) which is expressly denied by Menaka money not intended by Menaka to be given to Ng and Ng having enjoyed the benefit thereof is bound to restore the same to Menaka."

The learned judge proceeded to consider the matter under three issues namely: —

(1) Whether Menaka has violated section 8(b) of the Moneylenders Ordinance,

(2) Whether she has violated section 8(c) of the said Ordinance and

(3) Whether the two contractual terms in the charge should have been included in the memorandum under section 16.

The learned judge in reference to the third issue above decided that the omission to include the two onerous terms in the memorandum under section 16 was not fatal to Menaka's application, since Ng had been supplied with the stamped copies of the charge and of the memorandum under section 16 and that in his view both the memorandum and the charge should be read together and would in the circumstances constitute sufficient compliance with the provisions of section 16. There is no appeal against this finding.

The following facts emerge or may be inferred: —

1. that the authorised name of the moneylender is the firm of AR. PR. M. and the authorised address is 30 Leboh Ampang, Kuala Lumpur.
2. Manickam Chettiar was also licensed to carry out the business as an agent of the firm.
3. he was apparently also an attorney of Menaka.
4. the memorandum under section 16 showed that Menaka was the lender and it was signed by Manickam Chettiar as her attorney.
5. the memorandum on the charge registered at the Land Office disclosed Menaka as the lender. Again this document was signed by Manickam Chettiar as her attorney.

6. Two receipts were produced by Nachiappa Chettiar (Menaka's present attorney) and showed that Ng paid $400 on 28 August 1969 and $200 on 16 March 1965 as interest on this loan, and both receipts have the words "AR. PR. M. Firm, Managing Partner Menaka w/o Deivarayan, 30 Leboh Ampang, Kuala Lumpur." printed on them.
7. a cheque signed by Manickam Chettiar for AR. PR. M. Firm for $20,000 payable to Messrs. Shook Lin & Bok and dated 11th January 1965 was also in evidence.
8. the ledger entries included in the bundle show that the firm was the lender.

On the above facts the learned judge came to the conclusion that the provisions of section 8(b) and 8(c) of the Ordinance had been contravened with the result that the loan was illegal and void but not unenforceable. Apparently counsel for Menaka at the hearing before the learned judge conceded this.

Having come to that conclusion the learned judge turned to the question whether in the circumstances of the case section 66 of the Contracts (Malay States) Ordinance 1950 applies.

Section 66 reads as follows: —

"66. When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it."

In deciding this question the learned judge firstly made the following findings:

1. that both parties had no knowledge of the illegality until the affidavit by Nachiappa Chettiar had been filed, and
2. there was no evidence upon which such knowledge could be imputed to either of them.

He therefore concluded that section 66 applied and made an order that Menaka's application for an order of sale be dismissed and upon payment of the sum of $19,400 (the learned judge deducted $600 interest paid to Menaka by Ng from the sum of $20,000 loaned to him) by Ng to Menaka, there would be a declaration that the contract of loan and the charge executed by Ng was illegal and void.

Ng appealed against the judgment of the trial judge. He said the judge was wrong in directing him to pay Menaka the sum of $19,400 as a condition of obtaining the relief he sought. He set out several grounds of appeal.

Menaka cross appealed. Her main contentions were that the trial judge was wrong in holding that section 8(b) and 8(c) of the Moneylenders Ordinance had been contravened or that because of that the loan transaction was therefore illegal and void.

In arguing the appellant's grounds of appeal Mr. Segaram firstly attacked the judge's finding of fact that Menaka and her agent were not aware until the hearing of the provisions of section 8(b) and (c) of the Moneylenders Ordinance in the following manner. The burden is on them to show that they were not aware of those provisions. There was no evidence produced by them to show that. They also could not be heard to say that they were ignorant of the law. On the other hand, Ng gave evidence of his ignorance of the existence of those provisions. Mr. Segaram also stressed the principle that there was an obligation on moneylenders to know the provisions of the Moneylenders Ordinance and to observe their provisions. In the circumstances the learned judge should have concluded that both Menaka and Manickam Chettiar were aware that the provisions of section 8 were violated at the time when the two documents were executed.

Counsel went on to argue that the learned judge was right that the transactions were illegal and void but was wrong when he came to the conclusion that the provisions of section 66 of the Contracts Ordinance applied to those transactions.

I will first deal with the arguments of Mr. Palasuntharam, counsel for Menaka that the trial judge was wrong in holding that the provisions of the Moneylenders Ordinance had been contravened and further that if that was so, such contravention had not rendered the transactions illegal and void. He argued it in this manner. Firstly, Menaka had not in fact entered into the loan transaction in her name alone, as shown by the cheque, the receipts and the accounts, which all show that the firm was the lender. Secondly, the employment of the name of Menaka and not of the firm in the memorandum under section 16 of the Moneylenders Ordinance and in the memorandum of charge was merely with a view to complying with the provisions of the Land Code which did not permit a charge to be made in favour of a firm. (See sections 10 and 47 of the Land Code.) I am inclined to agree with counsel that on the evidence produced it could be argued successfully that Menaka was in fact carrying on the business in the name of AR. PR. M. Firm but with respect to counsel I cannot agree with him that the provisions of section 8(c) had not been contravened. Section 8(c) clearly states that if any person in the course of business as a moneylender enters as principal or agent into any agreement with respect of any advance or repayment of money, takes any security for money otherwise than in his authorised name, he shall be guilty of an offence under the Ordinance. It cannot be disputed that the authorised name of the moneylender in this case is AR. PR. M. Firm. That is stated in the application for the licence and I have no doubt it is also stated in the licence issued to the firm and that licence we assume has been all the time in the possession of either Menaka or her agent Manickam Chettiar. In reference to the point argued that the Land Code would not permit an execution of a charge to be in a firm's name as chargee the answer to that is that this provision could be complied with by stating in the memorandum of charge that Menaka was the trustee or managing partner of the firm but it is essential that the name of the firm being the authorized name of the moneylender is inserted in the memorandum under section 16 of the Moneylenders Ordinance as lender.

Mr. Palasuntharam then went on to argue that even if the provisions of section 8(b) and 8(c) had been violated, and that an offence or offences have been committed thereby, that would not affect the civil aspect of the transaction in the absence of provisions

in the section or elsewhere in the Ordinance to that effect as is found in section 18. That section requires a moneylender to keep a regular account of every loan in the manner therein prescribed and if he should fail to comply with the requirements thereof, he shall not only become disentitled to enforce any claim in relation to which the default has been made but that he also becomes guilty of an offence and liable to a fine. On the one hand, if a moneylender should fail to comply with the provisions of section 16, as for example if he obtains the signature of the borrower on the memorandum of loan before he hands the money to the borrower, he cannot enforce his contract but he commits no offence because of that. On the other hand, under section 28 if the moneylender when making a note under section 16 does not truly state or should leave blank the amount of principal or rate of interest, he commits an offence under that section. I am afraid I cannot accept counsel's contention because of the provisions of section 24 of the Contracts Ordinance. That section reads as follows: —

"24. The consideration or object of an agreement is lawful, unless —

(a) it is forbidden by law; or
(b) it is of such a nature that, if permitted, it would defeat the provisions of any law; or
(c) it is fraudulent; or
(d) it involves or implies injury to the person or property of another; or
(e) the court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

From the above provisions the agreement in the instant case being forbidden by law is thereby void. The principle is clearly stated by Parke B. in *Cope* v. *Rowlands*[1] in the following words: —

"It is perfectly settled that where the contract which the plaintiff seeks to enforce, be it express or implied, is expressly or by implication forbidden by the common or statute law, no court will lend its assistance to give it effect. It is equally clear that a contract is void if prohibited by a statute, though the statute inflicts a penalty only, because such a penalty implies a prohibition. And it may be safely laid down, notwithstanding some dicta apparently to the contrary, that, if the contract be rendered illegal, it can make no difference in point of law whether the statute which makes it so has in view the protection of the revenue or any other object. The sole question is whether the statute means to prohibit the contract."

Lord Dunedin in *Whiteman* v. *Sadler*[2] approved the above principle laid by Parke B. and in that case the House of Lords was considering the provisions of section 2(1)(c) of the English Moneylenders Act 1900 which are substantially similar to our section 8(c). The English section reads as follows: —

"A moneylender shall not enter into any agreement in the course of his business as a moneylender with respect to the advancement and repayment of money or take any security for money in the course of his business as a moneylender otherwise than in his registered name."

The next question is whether section 66 of our Contracts Ordinance applies. I have already set out the grounds upon which counsel for Ng argued before us that section 66 could not apply to this case. In deciding this question in favour of Menaka the learned judge made two findings of fact namely, both parties were not aware of the illegality at the time of the execution of the documents and it was only discovered when the statement of defence was filed.

Counsel for Ng argued before us that there was evidence upon which the court could come to the conclusion that Ng was not aware of the illegality until later because Ng himself swore to that fact before the learned trial judge. On the other hand, there was no evidence to show that Menaka or Manickam were equally ignorant. In my opinion the question of knowledge is a question of fact which the trial judge was entitled to draw from the circumstances of the case. The man who could come and give evidence on behalf of Menaka is Manickam Chettiar who is now unfortunately dead. In my view the transaction in question was an open and honest transaction. The relevant documents were prepared by a solicitor who appeared to be so concerned with complying with the provisions of the Land Code that he overlooked the provisions of section 8 of the Moneylenders Ordinance. It is obvious from the facts of the case that Menaka would have gained nothing from all this. I would therefore with respect support the learned judge's finding that neither Menaka nor Manickam Chettiar was aware of the illegality at the time of the execution of the documents.

As to the effect of section 66, the learned trial judge cited the following passage from the judgment of Chandra Reddy C.J. in *Kanuri Sivaramakrishnaiah* v. *Vemuri Venkata Narahari Rao*: [3]

"It is manifest that in order to invoke this action, the invalidity of the contract or agreement should be discovered subsequent to the making of it. This cannot be taken advantage of by parties who knew from the beginning the illegality thereof. It only applies to a case where one of the parties enters into an agreement under the belief that it was a legal agreement, i.e. without the knowledge that the agreement is forbidden by law or opposed to public policy and as such illegal.

The effect of section 65, (section 66 of the Malayan Contracts Ordinance) is that, in such a situation, it enables a person not in *pari delicto* to claim restoration since it is not based on an illegal contract but dissociated from it. That is permissible by reason of the section because the action is not founded on dealings which are contaminated by illegality. The party is only seeking to be restored to the *status quo ante*."

In the circumstances, I would say that the judge was right that Ng should restore the advantage he had received by returning the amount he received from Menaka. That is to say Ng has to return $19,400 to Menaka.

Mr. Palasuntharam, however, argued that the learned judge should have awarded interest. He pointed out in the case of *Harnath Kaur* v. *Indar Bahadur Singh*[4] the Privy Council awarded interest at the rate of 6% from the date of the institution of the suit in that case. I agree.

In the circumstances the judgment of the trial judge should be confirmed but with the amendment that there should be a further order directing Ng to pay interest at the rate of 6% from the date of the institution of the suit. In my opinion there should be no order as to costs in this court.

Suffian F.J.: With respect I concur with the Lord President's judgment.

Ong Hock Sim F.J.: I have had the advantage of reading the judgment of the Lord President with whom Suffian F.J. concurs. With respect, I disagree.

At the risk of being repetitious, I would like to state the facts once again, though the Lord President has already set them out in his judgment.

The respondent had applied for an order for sale by public auction, under section 256 of the National Land Code, of six parcels of land charged to her. This was resisted by the appellant who alleged breaches or contraventions of sections 8, 16, 18, 19 and 21 of the Moneylenders Ordinance (No. 42 of 1951). At the hearing, the appellant abandoned all his other defences and relied solely on section 8. He admitted that he did borrow the money and still owed the principal sum of $20,000 plus accrued interest, but he "refused to pay because of violation of legislation," although he was not aware of the illegality until after the commencement of this litigation. It may be said here and now that there was never any allegation that the transaction was harsh or unconscionable or savouring in any way of sharp practice. There was not any dispute or misapprehension as to the amount of the loan or any of the agreed terms. There was never any doubt or misunderstanding as to the identity of the moneylender or of his business address. The transaction was conducted and concluded with the assistance of the appellant's own solicitors, Messrs. Shook Lin and Bok. The appellant was paid through his solicitors the sum of $20,000 by a crossed cheque drawn in their favour upon the account of "AR. PR. M. Firm." All relevant documents, receipts and entries in books of account relating to this loan appeared under the name of "AR. PR. M. Firm" of 30 Leboh Ampang. The appellant had had no less than six dealings with the respondent.

On January 11, 1965 the respondent lent the appellant $20,000 bearing interest at the rate of 12% per annum on the security of a charge over six parcels of land executed by the appellant in her favour. Both the note or memorandum of the loan contract and the charge were executed, on the part of the respondent as lender and chargee, by her attorney Manickam Chettiar on her behalf. At all relevant times, the respondent and another moneylender, her brother-in-law Chockalingam, were partners carrying on business as moneylenders under the name or vilasam of AR. PR. M. Firm. Manickam Chettiar died in India some time in 1970. Chockalingam was never resident in Malaya, having visited this country only twice in 1963 or 1964. At the time of the loan, it would seem that the respondent was away in India and the necessary documents requiring execution by her, as managing partner of the AR. PR. M. Firm had to be signed by her attorney, Manickam Chettiar, who was properly licensed to do so.

In the court below, as well as here, it was contended that because the loan and charge were in the name of the respondent herself, instead of in the name of the AR. PR. M. Firm, she was carrying on business in a name *other than the authorised name* and taking a security for money lent *otherwise than in her authorised name*, thereby contravening the provisions of section 8(b) and (c). This defence, which I have no hesitation in describing as dishonest and dishonourable is based on a strained interpretation of section 8(b) and (c). Unfortunately at the hearing, respondent's counsel conceded, without argument, that there was failure to comply with the said provisions of section 8. In the result, the learned trial judge dismissed the application for sale of the charged lands. However, in respect of the appellant's application for ancillary reliefs by way of discharging the charge and delivery up of the note or memorandum of charge for cancellation, he made such orders subject to repayment by the appellant of the sum of $19,400 representing the balance of principal without any interest accruing since January 11, 1965. To this extent, the learned judge agreed with the respondent's counsel that, notwithstanding avoidance of the charge for illegality, section 66 of the Contracts Ordinance requires that the advantage in cash ought to be restored to the other party *ex aequo et bono*. Against that judgment, the appellant appeals, mainly on the ground that the learned trial judge was wrong in ordering him to repay the said sum of $19,400 as a condition for obtaining the reliefs to which he claims he was legally entitled. I think it pertinent here to add that at the date of filing of the Originating Summons, February 13, 1971, the accrued interest due was no less than $13,940. The respondent too has cross-appealed and *the main ground* of her cross-appeal *is that the provisions of section 8(b) and (c) were inapplicable and never in fact contravened*, so that there should have been an order in terms of her Originating Summons.

The only issue for determination therefore in this appeal is whether, by taking the charge, as chargee, in her personal name, the respondent had acted in contravention of the provisions of section 8(b) and (c) of the Moneylenders Ordinance, 1951, thereby rendering the charge void. If she had not, she was clearly entitled to the reliefs sought, but denied her by the High Court.

It is necessary here to reproduce section 8 in full. It reads:

"8. If any person —

(a) *takes out a licence in any name other than his true name;* or

(b) carries on business as a moneylender without holding a licence or, being licensed as a moneylender, *carries on business as such in any name other than his authorized name* or at any other place than his authorized address or addresses; or

(c) *in the course of business as a moneylender* enters as principal or agent into any agreement with respect to any advance or repayment of money or *takes any security for money otherwise than in his authorized name,*

he shall be guilty of an offence under this Ordinance and shall be liable to a fine not exceeding one thousand dollars and for a second or subsequent offence shall be liable to the fine aforesaid or to imprisonment for a term not exceeding twelve months and an offender being a company shall for a second or subsequent offence be liable to a fine not exceeding five thousand dollars:

Provided that a moneylender who is not, or in the case of a firm none of the partners of which are, ordinarily resident in the Federation may without being guilty thereby of an offence carry on business in any State without holding a licence if he carries on such business solely through an agent duly licensed under this Ordinance to carry on such business in such State under the name of such moneylender."

Despite counsel's concession of contravention of section 8(b) and (c), it should be kept in mind that

where such excessive legalism or a strained interpretation as leads to a law enacted for the protection of borrowers having the result of victimising and oppressing moneylenders carrying on business in an irreproachable manner, the case is one which calls for interference in the interests of justice. As Lord Atkin said in *Société Belge de Banque* v. *Girdhari Lal*: (5)

"Their Lordships find it difficult to believe that there was not some misunderstanding on appeal as to the acceptance by counsel for the bank of all the trial judge's findings. But if counsel did accept such a finding, it could only amount to an admission of a point of law which cannot be binding upon a court: and their Lordships do not consider themselves precluded from deciding the rights of the parties on a true view of the law."

Appellant's counsel cited a number of authorities all decided in respect of section 2(1)(b) and (c) of the English Moneylenders Act, 1900. I say here, as I shall have occasion to reiterate, that this is a question involving construction, and as Lord Warrington of Clyffe said in *Barrell* v. *Fordree*: (6)

"In my opinion, the safer and more correct course of dealing with a question of construction is to *take the words themselves and arrive*, if possible, *at their meaning without*, in the first instance, *reference to cases*. Of course, if a case is found which is in conflict with the opinion so formed then it must be dealt with."

As appellant's counsel has relied on authorities dealing with section 2(1) of the 1900 Act, it may be convenient to reproduce the section. It reads:

"2.—(1) A money-lender as defined by this Act —

(a) *shall register himself* as a moneylender in accordance with regulations under this Act, at an office provided for the purpose by the Commissioners of Inland Revenue, *under his own or usual trade name, and in no other name*, and with the address, or all the addresses if more than one, at which he carries on his business of moneylender; and

(b) *shall carry on* the money-lending *business in his registered name*, and *in no other name* and under no other description, and at his registered address or addresses, and at no other address; and

(c) *shall not enter into any agreement* in the course of his business as a moneylender with respect to the advance and repayment of money, *or take any security* for money in the course of his business as a moneylender, *otherwise than in his registered name;* and

(d) (not relevant)."

It is immediately apparent that section 2(1)(a) is *the limb* upon which all the other paragraphs hang, and there can be no construction of paragraphs (b), (c), or (d) without reference to (a), which require, in the first instance, that a moneylender "*shall register* himself . : *under his own name* or usual trade name *and in no other name.*" I can find no provision in our licensing regulations enacted in section 5 providing that a moneylender applying for his annual licence shall also state the name under which he desires or intends to carry on his business as moneylender. Section 2 of our Ordinance defines "authorised name" to "mean *the name* . . . under which a moneylender is *authorised by a licence* granted under this Ordinance to carry on business." I have said that there is no provision for "acquiring" an authorised name. Section 6(1) is directory, not mandatory, that every licence . . . shall show *his true name and the name under which*, and the address at which, he is *authorised by the licence* to carry on business as such, and in the case of an agent in addition the true name of the principal, whether an individual or a firm, on whose behalf such business is carried on, *and no licence shall authorise* a moneylender to carry on business *under any name except* —

(a) *his true name* or in the case of an agent the true name of the principal on whose behalf such agent carries on business; *or*

(b) *the name of a firm in which he is a partner* or of which he is an agent; or

(c) a business name, whether of an individual or of a firm in which he is a partner or of which he is an agent, under which he or the firm or in the case of an agent his principal has been registered under the Registration and Licensing of Businesses Ordinance, 1953.

Subsection (2) would seem to be directly in conflict with section 2 as to the "authorised name" as it peremptorily enacts:

"(2) A licence taken out in a name other than the moneylender's *true name* shall be void."

Our Ordinance had been badly drafted. It took bits and pieces of the 1900 and 1927 English Moneylenders' Acts. Section 15 of the 1927 Act defines "authorised name" as the name a moneylender is *authorised by a certificate* under section 2(3) to carry on the business of a moneylender. This certificate is a pre-requisite to a money-lender's excise licence under section 1 of the Act. In our Ordinance, "excise money-lender's licence" and "certificate" are treated as synonymous. Subsection 6(2) of our Ordinance is similar to a proviso to section (1) of the 1927 Act, which, as can be seen, bears a different meaning. It reads:

"Provided that a moneylender's excise licence shall be taken out by a moneylender in his true name and shall be void if it be taken out in any other name *but* every moneylender's licence shall also show the moneylender's authorised name."

Here the respondent did in fact take out a licence in her *true name*. I can find nothing in the provisions of the Ordinance itself or in the rules made by the Minister thereunder, which makes the use of the *true name* illegal and requires that the authorised firm name must be used in lieu of the moneylender's *true name* under pain of the transaction being rendered void and unenforceable. Subsection (6) of section 5 only empowers the Minister to make rules prescribing (1) the fee to be paid (2) the procedure to be followed in making application and (3) the information to be furnished upon such application. Does it extend to empowering the Minister to prescribe an "authorised name" directly opposed to the provisions of section 6(2)?

I agree therefore with the submission of respondent's counsel that there has been no contravention of section 8(b) and (c) which are wholly inapplicable.

Even if there had been, it is my view that noncompliance was not fatal to the respondent's claim. It must be remembered that at the relevant time, Manickam Chettiar held his licence as agent of the AR. PR. M. Firm, of which firm *the true name* of his principals were Menaka wife of Deivarayan and A.L. Chockalingam, who gave him their respective powers of attorney. Was the absence of words linking the AR. PR. M. Firm in the note or memorandum and in the charge such a fatal defect as to invalidate the whole transaction? First, it must be observed that, under section 5(3) the licence taken out by the respon-

dent as managing partner of the AR. PR. M. Firm "shall be deemed to be a licence to the firm" and every active resident partner "shall be deemed to hold a licence". Secondly, section 6(1) provides that "every licence granted to a moneylender shall show his *true name* and the name under which ... he is authorised by the licence to carry on business as such ... and no licence shall authorise a moneylender to carry on business under any name except (a) his *true name* or in the case of an agent the *true name* of the principal on whose behalf such agent carries on business; or (b) the name of a firm in which he is a partner or of which he is an agent ...". The respondent was not carrying on the business of the AR. PR. M. Firm in any hole-and-corner fashion. Her licence indisputably was issued in full compliance with section 6(1)(a) and (b) and so was the licence held by her attorney Manickam Chettiar. In the respondent's own licence, *her true name* was set out as managing partner and the firm name under which her business was carried on. In every respect the licence made a full and frank disclosure of the required particulars so that no borrower taking a loan from her could be under any shadow of doubt that she gave the loan and executed the charge as the managing partner of the firm authorised to carry on business under the registered name of AR. PR. M. Firm. How then can it be suggested that she had failed to comply with any of the conditions of her licence — when all particulars required by section 6 to be shown on her licence were fully and truthfully set out? Thirdly, both counsel in the High Court referred only to section 8(b) and (c). Neither of them, nor the judge, referred to the provisions of section 8(a). A more important omission was to read or refer to section 6. I should point out *that section 8 is enacted simply and solely to make breaches of section 6 punishable offences* and lay down the *maximum or limit of punishment* that may be imposed. The penalty thus provided for contravention of section 6 consequently is not and cannot be inclusive of forfeiture of a sum of money which in certain cases may run to astronomical amounts.

It was suggested by appellant's counsel that there was no difficulty in complying with section 8. All that was necessary was to append to her name some words of qualification or description. Had this been done, there could be no criticism of the validity of the charge, following *Chai Sau Yin* v. *Kok Seng Fatt*.[7] With respect, I do not agree with such an interpretation of the law which allows dishonesty to prevail in courts set up to administer justice. Here the moneylender was obeying both the letter and the spirit of the Ordinance. "The statute" said Lord Radcliffe with reference to the Moneylenders Act of Nigeria in *Rasumu* v. *Baba-Egbe*[8] "is not concerned with the vice of its content" (*i.e.* the loan contract) "but with the vice of the conditions under which it was made." As Lord Mersey said in *Whiteman* v. *Sadler*: [9]

"I might let the matter rest there, but it is perhaps worth while ot point out the consequences which would follow from holding otherwise. To hold otherwise would render not only this particular transaction void, but also every other transaction of money-lending which the appellants have entered into since they started in business; and would authorize every borrower from them to do that which the respondent desires to do in this case, namely, to refuse to pay back the money lent. Farwell L.J. dealt with this point and said: 'The repudiation of all liability to repay even the money actually advanced is dishonest and demoralizing to the borrower, but that was doubtless present to the mind of the Legislature in 1900'."

I have said earlier that each case has to be judged upon its facts. I have set out the surrounding circumstances attendant upon the transaction in question. I do not think that any one with any conscience can say that the appellant was in any way misled as to the nature of the transaction or the person with whom he was dealing. I do not think also that it can be said that the respondent had taken any undue advantage or failed to comply with provisions which go to the root of the legislation. Above all, the provision of a specific penalty for contravening section 6 does not, as do other provisions, provide for unenforceability or non-entitlement to sue. (See sections 15, 16, 18(2) and 27(2)). The wording of section 18(2) is significant. It says that a person not complying with section 18 "*shall not be entitled to enforce* any claim in respect of the transaction in relation to which default shall have been made". (See *Nasib Singh* v. *Jamilah binti Abd. Hamid*[10]). It goes further to say that "he *shall also be guilty of an offence* under this Ordinance". In my view section 8 is purely a penal provision. In the absence of words that non-compliance with section 8, besides being an offence, renders the contract or security unenforceable, I cannot see how the court can make any order resulting in forfeiture of more than $33,000 which rightfully belongs to the respondent.

Lord Macnaghten in *Whiteman* v. *Sadler* (cit.) at 520 on section 2(1)(c) asked:

"What is the consequence of holding that the registration, on which the defendants rely, is not in accordance with the requirements of the Act? Section 2, sub-section 1(c), provides that a money-lender 'shall not enter into any agreement in the course of his business as a money-lender, with respect to the advance and repayment of money, or take any security for money in the course of his business as a moneylender, otherwise than in his registered name.' Farwell L.J., from whom the other members of the court did not differ, held that if the registered name was placed on the register in contravention of the Act, there was 'no name registered at all within the Act.'

No one questions the principle to which Farwell L.J. refers. The application of the principle, however, in any particular case must depend on the provisions of the Act of Parliament under consideration, and the circumstances of that case.

I must confess that I have felt considerable difficulty in coming to a conclusion on this point, but on the whole I am of opinion that the bill of sale taken in the registered name of the money-lenders is not void, although the name was, I think, improperly registered.

I think the true view of the Act is this: The Act requires a money-lender, as defined by the Act, to register himself as a money-lender, in accordance with regulations under the Act, at an office provided for the purpose by the Commissioners of Inland Revenue. That is section 2, sub-section 1(a). By section 3, sub-section 1, the Commissioners are to 'make regulations respecting the registration of moneylenders ... the form of the register, and the particulars to be entered therein.' A money-lender registered under these regulations is to carry on the money-lending business in his registered name and in no other name. That is section 2, sub-section 1(b). He is not to enter into any agreement in the course of his business otherwise than in his registered name. That is section 2, sub-section 1(c). It would be a strong thing to hold that a person whose name has been placed on the register by the officers of a public department, in conformity with regulations purporting to be issued under the authority of Parliament, becomes liable to fine and imprisonment and the absolute loss of all his contracts, not for trading without registration but for trading in a registered name, registered, I admit, wrongly, but registered

by the authorised exponents of the requirements of the Act and the statutory custodians of the register. If, in violation of the plain words of the Act, a money-lender trades without being registered at all, or being registered trades in another name, he is very properly left to the mercy of any one who chooses to attack him, and his contracts are rightly avoided. But if he is registered by the Commissioners and registered improperly, the fault does not lie with him alone. The Commissioners are at least equally to blame. It was said that a money-lender registers himself; the Commissioners have to accept the entry proposed, if it is not in contravention of their published regulations. I do not think that is what the Act meant. The Commissioners have important duties cast upon them. In a great measure the execution of the Act is placed in their hands. Their regulations ought to be clear and explicit, and the forms of application for registration issued by them ought not to afford room for evasion.

By a wise foresight, or a fortunate chance, the Act has not left persons entirely unprotected who may be misled or not guided aright by the directions issued by the Commissioners. In the case of an alleged infringement of sub-section 1(a), the sub-section with which the Commissioners are mainly concerned, no prosecution can be instituted except with the consent of the law officers. No such provision is made with regard to (b) or (c). This seems to me to shew that what the Act meant to strike at in (c) was the case of a person actually registered by the Commissioners contracting otherwise than in his registered name, and that, so long as his name remains on the register, his contracts in that name are not to be held void, or his action in making contracts in that name punishable by fine and imprisonment.

I venture to hope that the Commissioners of Inland Revenue will issue regulations which may be a guide to persons proposing to register, and not an occasion for stumbling, and that they will repair the error they have committed by removing, on proper notice, names wrongly registered, and taking care in future that, so far as in them lies, the requirements of the Act shall be complied with.

In this way, and by these means, the Act, it may be hoped, will regain power, and at the same time command respect. As administered by the Board of Inland Revenue it loses half its virtue. As construed by the Court of Appeal it leads to a result which one of the learned judges of that court describes as 'dishonest and demoralizing.'

I think the action should be dismissed with costs."

Lord Dunedin in the same case said at page 527:

"The upshot of the matter seems to me that each statute must be judged of by itself. Now in the present statute we find a direct prohibition as to contracts in section 2(1)(c). 'A moneylender shall not enter into any agreement in the course of his business as a moneylender with respect to the advance and repayment of money, or take any security for money in the course of his business as a moneylender otherwise than in his registered name.'

It seems to me that express enactment shuts the door to further implication. *'Expressio unius est exclusio alterius.'*

I come therefore to the conclusion that the contract here was only void if it was struck at by the prohibition in section 2(1)(c). Was it so struck at? It is said that because we hold the registration to have been an improper registration therefore it was no registration. I do not think so. I think registered name means *de facto* registered name, and that it would be contrary to all justice to penalize the appellants for what was really a mistake of the Inland Revenue.

The appellants had a registered name, and I think the statute sought only to prohibit dealings in a name which was not registered at all."

We should adopt the line taken in that case. By accepting the contention of the appellant, we would in effect be penalising the respondent for defective draftsmanship of our Ordinance.

Our Ordinance by its provisions does not enable the moneylender by his licence to do any act except in accordance with section 6(1)(a) "in his *true name*". This was done here. Further the provisions of the Land Code did not permit registration in the name of a partnership or firm (see *Ching Chen Hong & Anor.* v. *Hameed & Ors.*[11]). Sections 10 and 47 did not permit the charge in this case to be taken in the "authorised name". As her partner, Chockalingam was a non-resident and hence disqualified on that ground by the provisions of section 5(2), the charge could only be taken in the name of the respondent herself as chargee, and it is impossible, in my opinion, to say that, by so doing she was carrying on business otherwise than in the authorised firm name and on the firm's account; on this point the books provided unimpeachable evidence of the truth.

I am of opinion that it was not possible for the respondent to comply with section 8(b) and (c) in the absence of provision in the Ordinance for an "authorised name". There was compliance however with the Ordinance in that she held a licence to carry on money-lending business in her *true name* and with the Land Code in respect of the registration of the charges in her own name.

I would therefore dismiss the appeal, allow the respondent's cross-appeal and set aside the order of the court below. I would give the respondent all the reliefs prayed for in Selangor Originating Summons No. 198/64, with costs both here and in the court below. The deposit of the appellant will be paid out to respondent to account of her taxed costs.

Judgement of trial judge confirmed with amendment.

Solicitors: *Segaram & Co.; V. K. Palasuntharam.*

P. RAMAN v. CHAIRMAN, BOARD OF GOVERNORS, SEKOLAH RENDAH JENIS KEBANGSAAN GOPENG & ANOR.

[F.C. (Azmi L.P., Gill and Ong Hock Sim F.JJ.) October 6, 1973]

[Ipoh — Federal Court Civil Appeal No. 141 of 1972]

Industrial Law — Whether a dismissed employee who had unsuccessfully appealed to the Minister for relief can seek a remedy in an ordinary court of law — Industrial Relations Act, 1967, s. 16A.

The appellant had his services as sweeper cum watchman at a school terminated by the Board of Governors of the School. He made representations to the Minister for Labour under section 16A of the Industrial Relations Act, 1967 but his representations were rejected. The appellant thereupon applied to the High Court for a declaration that his dismissal was wrongful. The learned trial judge held that as the matter had been considered and rejected by the Minister under section 16A of the Industrial Relations Act 1967, the court was precluded from dealing with the matter. Section 16A(5) of the Industrial Relations Act 1967 provides that the decision of the Minister on any representations made under the section "shall be final and conclusive and shall not be challenged in any court or in a court established under this Act."

Held: the Minister had made a decision for the purpose of subsection (5) of section 16A of the Industrial Relations Act, 1967, when he rejected the appellant's representations and therefore his decision became final and conclusive.

FEDERAL COURT.

G. Sivapragasam for the appellant.

W. S. W. Davidson for the respondents.

Azmi L.P.: We dismissed the appeal and here are my reasons for doing so.